

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANGELA B. HEIT; NICOLAS L. HEIT;
SANDRA K. JOHNSON; CATHERINE A.
KARLSEN; POLLY A. MULLER; LAURA
F. NAVONE; ROBIN C. OESTREICH;
DANIEL S. PIERCE; JENNIFER M.
TOUTONGHI; and DOES 1-178;

Plaintiffs,

vs.

MONSANTO COMPANY, a Delaware
corporation; SOLUTIA INC., a Delaware
corporation; PHARMACIA LLC, a Delaware
limited liability corporation, f/k/a Pharmacia
Corporation; UNION HIGH SCHOOL
DISTRICT NO. 402; SNOHOMISH
HEALTH DISTRICT; and ROES 1-10;

Defendants.

Case No. 2:18-CV-01849-BJR

JOINT STATUS REPORT REGARDING
THE COURT'S JANUARY 28, 2019
AMENDED ORDER TO SHOW CAUSE

Pursuant to the Court's January 28, 2019 Amended Order to Show Cause, the parties
Angela B. Heit; Nicholas L. Heit; Sandra K. Johnson; Catherine A. Karlsen; Polly A. Muller;
Laura F. Navone; Robin C. Oestreich; Daniel S. Pierce; Jennifer M. Toutonghi; and Does 1-
178 ("Plaintiffs"), Monsanto Company, Solutia Inc., Pharmacia LLC, (collectively
"Monsanto") and Snohomish Health District ("SHD"), by and through their counsel of record,

JOINT STATUS REPORT REGARDING THE COURT'S
AMENDED ORDER TO SHOW CAUSE CASE NO. 2:18-
CV-01849-BJR - 1

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met and conferred on January 31, 2019. The parties submit the following Joint Status Report regarding consolidation pursuant to Fed. R. Civ. P. 42(a)(2).

Plaintiffs' Position:

1. Plaintiffs do not object to consolidation of *Heit et. al. v. Monsanto, et. al.*, No. 2:18-cv-1849 BJR and *Erickson, et. al. v. Monsanto, et. al.*, No. 2:18-cv-01793 BJR.

Monsanto's Position:

1. Monsanto does not object to coordination of *Heit et. al. v. Monsanto, et. al.*, No. 2:18-cv-1849 BJR and *Erickson, et. al. v. Monsanto, et. al.*, No. 2:18-cv-01793 BJR for purposes of discovery and pre-trial proceedings.

2. Monsanto objects to consolidation of these two matters for trial or joinder of the Plaintiffs in these two actions. Monsanto invites the opportunity to fully brief this issue at the Court's request.

3. It is Monsanto's position that while the *Erickson* and *Heit* matters may include a common question of fact or law, individual issues predominate and far outweigh the common. *See Hasman v. G.D. Searle & Co.*, 106 F.R.D. 459, 461 (E.D. Mich. 1985), ("[w]hen cases involve sole common issues but *individual issues* predominate, consolidation should be denied."); *Rubio v. King Cty.*, No. C16-1269-JCC-JPD, 2017 WL 2172014 (W.D. Wash. May 17, 2017), * 2 (denying consolidation of cases involving same plaintiff, similar defendants, similar claims, and the same counsel for all defendants when the factual events giving rise to claims were different). The individual issues in these cases are: (1) the nature and extent of the Plaintiffs' claimed injuries; (2) specific causation; (3) potential alternative exposures; (4) previous medical histories relevant to present claims; and (5) duration, frequency and

1 circumstances of exposure. Every Plaintiff's case should stand and be tried on its own merit.

2 4. Because Plaintiffs' personal injury claims are predominantly individual,
3 Monsanto contends that consolidation for purposes of trial would result in substantial prejudice
4 because of the high likelihood of confusion of the jury. *See Hasman*, 106 F.R.D. at 460
5 ("Convenience and judicial economy is outweighed by the likelihood of confusion and
6 prejudice."); *Malcolm v. Nat. Gypsum Co.*, 995 F.2d 346, 350 (2d Cir. 1993) ("The benefits of
7 efficiency can never be purchased at the cost of fairness."). Consolidation of *Erickson* and
8 *Heit*, would be prejudicial because it would unfairly aggregate the claims of the individual
9 plaintiffs and gloss over the individual causation determinations that the jury will be required
10 to make. *See, e.g. Garber v. Randell*, 477 F.2d 711, 716 (2d Cir. 1973) (overturning
11 consolidation order because it would "deny a party his due process right to prosecute his own
12 separate and distinct claims or defenses without having them so merged into the claims or
13 defenses of others that irreparable injury will result").
14
15

16 6. It is Monsanto's position that substantial prejudice can be avoided and
17 efficiencies gained by the coordination of *Erickson* and *Heit* for purposes of discovery and
18 pre-trial proceedings, but not consolidating for trial or joinder of Plaintiffs.
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20 **Snohomish Health District's Position:**

21 1. Snohomish Health District contends that it is not a proper party to this case
22 based on the reasons set forth in Monsanto's Notice of Removal. *See* Dkt. #1. For purposes
23 of this Joint Status Report, Snohomish Health District joins in Monsanto's position and objects
24 to consolidation for purposes of trial or joinder of the Plaintiffs, but does not object to
25 coordination for purposes of discovery and pre-trial proceedings.
26

Dated this 5th day of February, 2019.

SCHWABE, WILLIAMSON & WYATT,
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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 5th day of February, 2018, I arranged for service of the foregoing JOINT STATUS REPORT REGARDING THE COURT'S JANUARY 28, 2019 AMENDED ORDER TO SHOW CAUSE to the parties to this action via the Court's CM/ECF system as follows:

<p>Sean J. Gamble, WSBA #41733 sgamble@friedmanrubin.com James A. Hertz, WSBA #35222 jhertz@friedmanrubin.com Henry G. Jones, WSBA #45684 hjones@friedmanrubin.com mblackledge@friedmanrubin.com nskretta@friedmanrubin.com FRIEDMAN RUBIN PLLP 51 University Street, Suite 201 Seattle, WA 98101 Phone: 206.501.4446 Fax: 206.623.0794</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Adam Edward Miller, Bar No. 40945 miller@capessokol.com mulligan@capessokol.com Drey A. Cooley, Bar No. 58784 cooley@capessokol.com Katherine D. Landfried, Bar No. 70181 landfried@capessokol.com CAPES SOKOL 7701 Forsyth Boulevard, 12th Floor St. Louis, MO 63105 P: 314.754.4810 F: 314.754.4811</p> <p><i>Attorneys Admitted Pro Hac Vice for Defendants Monsanto Company, Pharmacia LLC and Solutia Inc.</i></p>
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6 /s/ Rebekah A. Davies

7 Rebekah A. Davies